



2011 SENATE BILL 490

February 20, 2012 - Introduced by Senators GROTHMAN, DARLING, LASEE, MOULTON, OLSEN and SCHULTZ, cosponsored by Representatives HONADEL, BIES, BROOKS, KESTELL, LEMAHIEU, MURSAU, NERISON, NYGREN, SPANBAUER, STASKUNAS, STONE, STRACHOTA, TIFFANY, VAN ROY, VRUWINK, WEININGER, WYNN and E. COGGS. Referred to Committee on Transportation and Elections.

1 **AN ACT to repeal** 84.305 (1) (c), 84.305 (1) (d), 84.305 (1) (f), 84.305 (1) (k), 84.305
2 (2) (a) 1., 84.305 (2) (a) 2., 84.305 (2) (a) 4., 84.305 (2) (b), 84.305 (3) (c), 84.305
3 (3) (f), 84.305 (5) (b) and 84.305 (5) (c); **to renumber and amend** 84.305 (3) (e)
4 and 84.305 (6); **to consolidate, renumber and amend** 84.305 (2) (a) (intro.)
5 and 3.; **to amend** 84.305 (1) (e), 84.305 (1) (h), 84.305 (3) (a), 84.305 (3) (b),
6 84.305 (3) (d), 84.305 (3) (g), 84.305 (5) (a) and 84.305 (7); and **to create** 84.305
7 (1) (cm), 84.305 (2m) (b) and (c), 84.305 (3) (h), 84.305 (5) (ag) and (ar), 84.305
8 (5) (d) and 84.305 (5) (e) of the statutes; **relating to:** maintenance and removal
9 of vegetation obstructing the view of outdoor advertising signs along highways
10 under the jurisdiction of the Department of Transportation.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) is responsible for maintenance of the highway right-of-way on highways that, for maintenance purposes, are under its jurisdiction, which are generally state trunk highways (including interstate highways) but do not include connecting highways. DOT must provide for the care and protection of trees and other roadside vegetation. DOT must

SENATE BILL 490

also cut, trim, or remove, or allow others to cut, trim, or remove, trees and other vegetation in order to provide safety to highway users. Current law generally prohibits a person from cutting, trimming, removing, or planting a tree or other vegetation within the right-of-way of a state trunk highway without DOT's consent.

The federal Highway Beautification Act requires states to restrict advertising along interstate and federal-aid primary highways, which includes state trunk highways and connecting highways, and current state law incorporates these requirements. Current law prohibits, with certain exceptions, the erection or maintenance of outdoor advertising signs (signs) within 660 feet of, or beyond 660 feet but visible (and erected for the purpose of being visible) from, the main-traveled way of an interstate or federal-aid primary highway. Exceptions to this prohibition include, with some restrictions, signs advertising activities conducted on the property on which the signs are located; signs located beyond 660 feet of the highway in urban areas; and signs located within 660 feet of the highway in certain business, industrial, or commercial areas.

Under current law, DOT administers a permit system for the maintenance and removal by sign owners of vegetation obstructing the view of signs along state trunk highways, including interstate highways. DOT may issue permits to sign owners for the trimming, removal, or relocation of vegetation in the highway right-of-way if, within various specified distances along the highway, the vegetation obstructs motorists' view of the face of a sign. A permit authorizes the sign owner, or a third-party contractor employed by the sign owner, to trim, remove, or relocate obstructing vegetation to the extent necessary to eliminate the obstruction and restore an unobstructed view of the sign for the applicable specified distance along the highway. A permit must specify the vegetation or the portion of the highway right-of-way to which the permit applies. Each permit must require a sign owner that removes planted vegetation to either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. DOT must present to the sign owner DOT's calculation of the value of the planted vegetation, and the sign owner may elect to relocate the planted vegetation or to reimburse DOT in the amount calculated by DOT.

This bill makes various changes to DOT's permit system for maintenance and removal of vegetation obstructing signs, including the following:

1. The bill replaces various sign viewing standards with a single standard: that a sign owner is eligible for a permit to trim or remove vegetation if, for a distance of 500 continuous feet within the 1,000 feet distance motorists travel immediately before reaching the sign, the vegetation obstructs the view of any portion of the face of the sign. The bill also eliminates an exception that allowed DOT to issue a permit for a noncontinuous 500 feet viewing distance.

2. The bill specifies that, with limited exceptions, DOT must issue permits to eligible applicants. Also under the bill, DOT permits authorize the trimming or removal, but not the relocation, of obstructing vegetation. The bill also requires all trimming to be performed in compliance with applicable standards of the American National Standards Institute.

SENATE BILL 490

3. The bill eliminates the requirement that a permittee that removes planted vegetation must either relocate the planted vegetation or reimburse DOT for the value of the planted vegetation. The bill replaces this requirement with the requirement that a permittee that removes vegetation with a diameter of four inches or more must plant replacement vegetation to compensate for the vegetation removed. DOT must determine where the replacement vegetation is to be planted, but it must be planted in the highway right-of-way within ten miles of the location where the vegetation was removed. The bill specifies that a permittee that removes vegetation must also remove the vegetation's stump and must dispose of all vegetation removed.

4. Under the bill, DOT's permit system for the maintenance and removal of vegetation obstructing the view of a sign also applies to any sign that is attached to a building or similar structure, that is within 100 feet of the highway right-of-way, and that advertises activities conducted on the property.

5. The bill eliminates a provision of current law that a permit may not authorize the trimming, removal, or relocation of vegetation in existence prior to the erection of the sign obstructed by the vegetation. The bill replaces this provision with a provision that DOT may not issue a permit to trim or remove vegetation obstructing the view of a sign that is less than five years old (calculated from when DOT first collected the sign's permit fee), except a sign that is attached to a building or similar structure, that is within 100 feet of the highway right-of-way, and that advertises activities conducted on the property.

6. The bill eliminates a provision of current law allowing DOT to require as a condition or restriction under a permit that the work authorized under the permit meet standards established by DOT. Instead, under the bill, DOT may impose any condition or restriction on a permit that DOT customarily imposes in connection with work performed on highway rights-of-way. The bill retains current law that DOT has authority to supervise and determine how the work authorized under a permit is carried out.

7. Under the bill, DOT may deny an application for a permit for a sign for which DOT has issued a removal order and the removal order was received by the sign owner prior to DOT's receipt of the application. DOT may also impose conditions or restrictions on a permit under certain circumstances, including that the application seeks authorization for the trimming or removal of vegetation at an archaeological site. Under the bill, all trimming and removal of vegetation, as well as all planting of replacement vegetation, must be conducted within the hours of the day and days of the week specified by DOT in the permit.

8. The bill eliminates a requirement under current law that, under certain conditions, a sign owner applying for a permit must, at the time of the application, provide written notice of the application to any adjacent property owner and to the applicable municipality.

9. The bill eliminates a provision of current law requiring DOT, within 30 days of receiving an application for a permit, to determine whether the application is complete and to return it to the applicant if incomplete.

SENATE BILL 490

10. The bill expands the definition of “vegetation,” for purposes of the bill, to include grass. The bill also eliminates the distinction between various other types of vegetation, including “natural vegetation,” “planted vegetation,” and “specimen trees.”

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 84.305 (1) (c) of the statutes is repealed.

2 **SECTION 2.** 84.305 (1) (cm) of the statutes is created to read:

3 84.305 (1) (cm) “Natural snow fence” means vegetation in a highway
4 right-of-way that functions as a berm or barrier to inhibit the accumulation of snow
5 on the highway during the winter season.

6 **SECTION 3.** 84.305 (1) (d) of the statutes is repealed.

7 **SECTION 4.** 84.305 (1) (e) of the statutes is amended to read:

8 84.305 (1) (e) “Sign” has the meaning given in s. 84.30 (2) (j), but also includes
9 any sign that is attached to a building or similar structure, that is within 100 feet
10 of a highway right-of-way, and that advertises activities conducted on the property
11 on which it is located.

12 **SECTION 5.** 84.305 (1) (f) of the statutes is repealed.

13 **SECTION 6.** 84.305 (1) (h) of the statutes is amended to read:

14 84.305 (1) (h) “Vegetation” means any tree, shrub, hedge, ~~or other~~ woody plant,
15 ~~and includes planted vegetation, natural vegetation, and specimen trees.~~
16 ~~“Vegetation” does not include or~~ grass.

17 **SECTION 7.** 84.305 (1) (k) of the statutes is repealed.

18 **SECTION 8.** 84.305 (2) (a) (intro.) and 3. of the statutes are consolidated,
19 renumbered 84.305 (2) and amended to read:

SENATE BILL 490

1 84.305 (2) Notwithstanding ss. 66.1037 and 86.03, and subject to sub. (2m),
2 upon application, the department ~~may~~ shall issue permits to sign owners for the
3 trimming, or removal, ~~or relocation~~ of vegetation that is located in the right-of-way
4 of a highway under the jurisdiction of the department for maintenance purposes and
5 that obstructs a sign if ~~any of the following applies:~~ ~~3. Subject to par. (b)~~, within a
6 distance of 500 continuous feet along any portion of the viewing zone, any portion of
7 the face of the sign is not viewable because of an obstruction to sight by ~~natural~~
8 vegetation in the highway right-of-way.

9 **SECTION 9.** 84.305 (2) (a) 1. of the statutes is repealed.

10 **SECTION 10.** 84.305 (2) (a) 2. of the statutes is repealed.

11 **SECTION 11.** 84.305 (2) (a) 4. of the statutes is repealed.

12 **SECTION 12.** 84.305 (2) (b) of the statutes is repealed.

13 **SECTION 13.** 84.305 (2m) (b) and (c) of the statutes are created to read:

14 84.305 (2m) (b) The department may impose on a permit under this section any
15 condition or restriction determined to be necessary or suitable by the department if
16 the permit application seeks authorization for the trimming or removal of vegetation
17 at or with respect to any of the following:

18 1. An archaeological site or site of a federally recognized American Indian tribe
19 or band.

20 2. A location that is part of a known habitat of endangered species or threatened
21 species under s. 29.604.

22 3. Vegetation that serves as a junkyard screen, as described in s. 84.31.

23 (c) The department may deny an application under this section for a permit for
24 a sign for which the department has issued a removal order and the removal order
25 was received by the sign owner prior to the department's receipt of the application.

SENATE BILL 490**SECTION 14**

1 **SECTION 14.** 84.305 (3) (a) of the statutes is amended to read:

2 84.305 (3) (a) Subject to pars. (d) to ~~(g)~~ (h) and sub. ~~subs. (2m) (b), (4), and (6),~~
3 a permit issued under this section authorizes the permittee to trim ~~obstructing~~
4 ~~vegetation~~ or remove ~~or relocate~~ ~~obstructing individual plants~~ vegetation to the
5 extent necessary to eliminate the obstruction and ~~remedy any condition specified~~
6 ~~under sub. (2) (a) 1. to 4.~~ provide an unobstructed view of a sign for 500 continuous
7 feet within the viewing zone. A permit issued under this section shall specify the
8 vegetation or the portion of the highway right-of-way to which the permit applies.

9 **SECTION 15.** 84.305 (3) (b) of the statutes is amended to read:

10 84.305 (3) (b) An application for a permit under this section shall specifically
11 describe the work proposed by the applicant. The department shall grant or deny an
12 application for a permit under this section, and notify the applicant of the
13 department's decision, within 60 days of receipt of the application. ~~Within 30 days~~
14 ~~of receipt of the application, the department shall determine whether the application~~
15 ~~is complete and, if not, the department shall return the application to the applicant~~
16 ~~and inform the applicant of what information, specifically described, must be~~
17 ~~provided by the applicant to complete the application. The department may not deny~~
18 ~~an application for a permit under this section based solely upon receipt by the~~
19 ~~department of an objection or complaint from a property owner or municipality~~
20 ~~receiving notice under par. (e), but the department may consider the objection or~~
21 ~~complaint in determining whether to grant or deny the application for a permit. If~~
22 the department denies an application for a permit under this section, the department
23 shall notify the applicant of reasons for the denial.

24 **SECTION 16.** 84.305 (3) (c) of the statutes is repealed.

25 **SECTION 17.** 84.305 (3) (d) of the statutes is amended to read:

SENATE BILL 490

1 84.305 (3) (d) A permit issued under this section may not authorize trimming,
2 or removal, or relocation of vegetation located within a municipality and within 10
3 feet of the nearest edge of the highway pavement without prior approval for the
4 trimming, or removal, or relocation from the municipality.

5 **SECTION 18.** 84.305 (3) (e) of the statutes is renumbered 84.305 (2m) (a) and
6 amended to read:

7 84.305 (2m) (a) ~~A permit issued under this section may not authorize the~~
8 ~~permittee to trim, remove, or relocate vegetation in existence prior to the erection of~~
9 ~~the sign obstructed by the vegetation. Nothing in this paragraph prohibits the~~ The
10 ~~department from issuing~~ may not issue a permit under this section authorizing the
11 trimming, or removal, or relocation of vegetation that, at the time the sign was
12 erected, ~~did not obstruct~~ obstructing the view of the a sign if the department first
13 collected a permit fee under s. 84.30 (10m) for that sign within the immediately
14 preceding 5 years. This paragraph does not apply with respect to a sign that is
15 attached to a building or similar structure, that is within 100 feet of a highway
16 right-of-way, and that advertises activities conducted on the property on which it
17 is located.

18 **SECTION 19.** 84.305 (3) (f) of the statutes is repealed.

19 **SECTION 20.** 84.305 (3) (g) of the statutes is amended to read:

20 84.305 (3) (g) A permit issued under this section may not authorize the
21 permittee to clear-cut any highway right-of-way. The permit authorizes the
22 permittee to trim, or remove, or relocate only the vegetation specified in the permit,
23 or only vegetation within the area of the right-of-way specified in the permit, in
24 accordance with the terms of the permit. All trimming of vegetation authorized
25 under a permit shall be performed in compliance with applicable standards of the

SENATE BILL 490**SECTION 20**

1 American National Standards Institute, but if the trimming cannot be accomplished
2 in compliance with these standards, the vegetation may be removed and replaced as
3 provided in sub. (5).

4 **SECTION 21.** 84.305 (3) (h) of the statutes is created to read:

5 84.305 (3) (h) All trimming and removal of vegetation under a permit issued
6 under sub. (2), and all planting of vegetation under sub. (5), shall be conducted within
7 the hours of the day and days of the week specified by the department in the permit.

8 **SECTION 22.** 84.305 (5) (a) of the statutes is amended to read:

9 84.305 (5) (a) ~~Each~~ Subject to par. (ar), each permit issued under this section
10 shall require a permittee that removes ~~planted vegetation to either relocate the~~
11 ~~planted vegetation or reimburse the department for the value of the planted~~
12 ~~vegetation. The department shall present to the permittee the department's~~
13 ~~calculation of the value of the planted vegetation, and the permittee may elect to~~
14 ~~relocate the planted vegetation or to reimburse the department for the value of the~~
15 ~~planted vegetation as determined by the department~~ any tree with a diameter of 4
16 inches or more as measured at 3 feet from the ground, or any other vegetation with
17 a diameter of 4 inches or more, to plant comparable replacement vegetation to
18 compensate for all such vegetation removed, in compliance with the requirements
19 under pars. (d) and (e).

20 **SECTION 23.** 84.305 (5) (ag) and (ar) of the statutes are created to read:

21 84.305 (5) (ag) Each permit issued under this section shall require a permittee
22 that removes vegetation to also remove the vegetation's stump, to grade level, and
23 to dispose of all vegetation removed, including the stump, at a location away from the
24 highway right-of-way.

SENATE BILL 490

1 (ar) The department may require that, if vegetation that serves as a natural
2 snow fence cannot be trimmed in compliance with the standards specified in sub. (3)
3 (g) and is removed, this vegetation shall be replaced with an equally effective,
4 substitute means of controlling blowing and drifting snow, which means may be
5 synthetic or artificial.

6 **SECTION 24.** 84.305 (5) (b) of the statutes is repealed.

7 **SECTION 25.** 84.305 (5) (c) of the statutes is repealed.

8 **SECTION 26.** 84.305 (5) (d) of the statutes is created to read:

9 84.305 (5) (d) 1. In planting replacement vegetation under par. (a), the
10 permittee shall determine the diameters of all trees with a diameter of 4 inches or
11 more, as measured at 3 feet from the ground, and of all other vegetation with a
12 diameter of 4 inches or more, that was removed and shall calculate the sum total of
13 these diameters for each category of vegetation, such as for trees, for shrubs, and for
14 hedges. In calculating the sum total of these diameters, the permittee shall not
15 include in the calculation the diameter of any vegetation that was dead, diseased, or
16 determined to be an invasive species at the time of its removal.

17 2. The permittee shall plant sufficient replacement vegetation with a diameter
18 of at least 2 inches so that the sum total of the diameters of the replacement
19 vegetation, for each category of vegetation, at least equals the sum total of the
20 diameters as calculated under subd. 1. for that category.

21 **SECTION 27.** 84.305 (5) (e) of the statutes is created to read:

22 84.305 (5) (e) 1. Subject to subd. 2., the department shall determine where
23 replacement vegetation required under this subsection is to be planted.

24 2. Replacement vegetation required under this subsection shall be planted in
25 the highway right-of-way not farther than 10 miles from the location of the removed

SENATE BILL 490**SECTION 27**

1 vegetation being replaced. Replacement vegetation may not be planted in front of
2 a sign.

3 **SECTION 28.** 84.305 (6) of the statutes is renumbered 84.305 (6) (a) and
4 amended to read:

5 84.305 (6) (a) The department shall have authority to supervise and determine
6 how the work authorized under a permit issued under this section is carried out.

7 (b) The department may ~~require as a~~ impose any condition or restriction under
8 any on a permit issued under this section that ~~the work authorized under the permit~~
9 ~~meet standards established by the department~~ customarily imposes in connection
10 with work performed on highway rights-of-way.

11 **SECTION 29.** 84.305 (7) of the statutes is amended to read:

12 84.305 (7) Nothing in this section prohibits a sign owner and the department
13 from voluntarily negotiating for, and the department from authorizing without the
14 issuance of a permit under this section, the ~~trimming, or removal, or relocation~~ of any
15 vegetation in a highway right-of-way in order to provide an unobstructed view of a
16 sign, except in situations where sub. (3) (d) would apply if a permit were issued under
17 this section. Nothing in this section restricts the department's authority with respect
18 to departmental maintenance operations in the rights-of-way of highways under
19 the department's jurisdiction.

20 **SECTION 30. Effective date.**

21 (1) This act takes effect on the 30th day after the day of publication.

22 (END)